HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.15636 OF 2006

Between:

Vemulapudi Suryanarayana

. . .Petitioner

AND

Chairman, Lok Adalat and another

. . .Respondents

Counsel for the petitioner : Shri E.V.Bhagiratha Rao

Dated: 28th July, 2006

: ORDER :

PER G.S.SINGHVI, CJ

In this petition, the petitioner has prayed for quashing Award dated 30-4-2005 passed by Chairman, Lok Adalat, Chodavaram, Visakhapatnam District in Maintenance Case No.17 of 2003.

For deciding the tenability of the petitioner's plea, it will be useful to briefly notice the facts.

Non-petitioner No.2, Smt. Vemulapudi Lakshmi filed a petition under Section 125 of the Code of Criminal Procedure, 1973 in the Court of Additional Judicial Magistrate of First Class, Chodavaram with the prayer that her husband (petitioner herein) be directed to pay maintenance at the rate of Rs.1,000/- per month. She averred that she is the wife of the petitioner. They were married 28 years ago and had three children (two female and one male). Both the female children died and the male child namely, Ganesh is alive. She alleged that the petitioner had developed the habit of drinking alcohol and was neglecting her. She further averred that the petitioner is employed as a driver in Special Minor Irrigation Department and was getting salary of Rs.7,000/- per month and further that he has a house worth Rs.5,00,000/- at Tuni and he has sufficient means to maintain her.

In the counter affidavit filed by him, the petitioner denied the assertion of non-petitioner No.2 regarding their marriage and birth of three children. In paragraph 3 of the counter affidavit, the petitioner averred that he belongs to the community of washer-men on 4-4-1972 at Panduranga Swamy vari Temple in Payakaraopeta as per Hindu law and customs and they had four children, out of whom two are surviving. He averred that he is living with Annapurnamma with two

children for the last 32 years. He denied the allegation of alcoholism and pleaded that the application for maintenance has been filed with an oblique motive and with a view to blackmail him. He also questioned the jurisdiction of the Court of Additional Judicial Magistrate of First Class to entertain the petition filed by non-petitioner No.2.

Non-petitioner No.2 appeared as P.W.1 on 18-2-2005 and made a statement supporting her claim. She produced documents marked as Exs.P1 to P8 including photographs showing herself, the petitioner herein and their son. She was cross-examined by the petitioner's Advocate on 30-3-2005. Thereafter, the case was adjourned to 13-4-2005 and again to 29-4-2005. One day after the date of hearing, the petitioner and non-petitioner No.2 filed a joint compromise petition dated 30-4-2005, whereby the petitioner agreed to pay a sum of Rs.1,000/- per month towards maintenance to non-petitioner No.2. For the sake of reference, the relevant portions of the compromise petition are reproduced below:

> "1. We are parties in the above petition.
>
> 2.In the above petition, petitioner claimed maintenance of Rs.1,000/- per month from the respondent. As per court conciliators and elders on their advice, we both parties agreed for compromise as hereunder:
>
> <u>CONDITIONS OF COMPROMISE:</u>
>
> 1. The respondent admitted the petitioner as his wife.
>
> 2. The respondent has to pay Rs.1,000/- per month towards maintenance of the petitioner from the date of petition.
>
> 3. In the event of payment of Rs.1,00,000/- by the respondent to the petitioner in future and at any time in lump sum towards her permanent alimony, the petitioner has to give up her right of claiming above said monthly maintenance amount of Rs.1,000/-.
>
> 4. The respondent has to pay the costs of petition to the petitioner.
>
> As the parties have agreed for the above terms of compromise the same may be recorded by the court and

necessary orders be passed."

The compromise petition was put up before Lok Adalat, Chodavarm, which passed the impugned award in terms of the compromise arrived at between the parties.

The petitioner has questioned the award mainly on the ground that his signatures were obtained on the compromise petition by use of force and, therefore, the same cannot be treated as a bona fide compromise. In paragraphs 3 and 4 of the affidavit filed by him in support of the writ petition, the petitioner has made a brief reference to the averments contained in the application filed by non-petitioner No.2 and his counter. In paragraphs 5, 6 and 7, he has averred that non-petitioner No.2 was cross examined by his Advocate on 30-3-2005 and the case was adjourned to 13-4-2005 and 29-4-2005 at the instance of his Advocate for cross-examination of non-petitioner No.2. He has then averred that taking advantage of his weakness, non-petitioner No.2 and her relatives forcibly took him away on 29-4-2005, confined him to a secluded place and forcibly obtained his signatures on the compromise, which was later on presented before the Lok Adalat. For the sake of reference, averments contained in paragraphs 6 and 7 of the petitioner's affidavit are reproduced below:

> "6. Taking advantage of my weakness, the 2nd respondent and her relatives physically took me away on 29-4-2005 when I came to Chodavaram to assist my counsel for cross examination of 2nd respondent as P.W.1 in M.C.No.17 of 2003 and confined me the whole day in a secluded place and took me alone forcibly to the 1st respondent on 30-4-2005 and made me sign the alleged compromise when I was not in my normal senses. I respectfully submit as is seen from the deed of compromise dated 30-4-2005 it is only the 2nd respondent and her counsel signed and it bears my signature. My counsel was not aware of the said compromise and it does not bear his signature as is evident from the compromise

petition and the award dated 30-4-2005.

7. I respectfully submit that the 1st respondent has no jurisdiction or authority to pass an award as the compromise or settlement has been arrived at by a Lok Adalat in a case referred to it under sub-section (1) of Section 20 of the Legal Services Authorities Act of 1987. I respectfully submit the M.C.No.17 of 2003 pending on the file of Additional Judicial First Class Magistrate, Chodavram was not at all referred to Lok Adalat under Section 20 of the said Act as the parties in M.C.No.17 of 2003 have not agreed nor made an application under Section 20(1)(i)(b) for referring the case to Lok Adalat."

We have heard Sri E.V.Bhagiratha Rao, learned counsel for the petitioner. In our opinion, the writ petition is liable to be dismissed summarily because the averments contained in paragraph 6 of the petitioner's affidavit are not supported by any tangible evidence. If there was any grain of truth in the petitioner's allegation that non-petitioner No.2 and her relatives forcibly took him away on 29-4-2005 and confined him in a secluded place and forcibly made him to sign the compromise petition, then it would have been natural for him to immediately lodge first information report with the police or at least file a complaint in the Court of Additional Judicial Magistrate of First Class, Chodavaram narrating the background in which his signatures were said to have been obtained by use of force/threat. However, the fact of the matter is that he neither filed any FIR nor made any complaint before Additional Judicial Magistrate of First Class, Chodavaram that he had been compelled to sign the compromise petition against his will. The present petition was filed in the High Court on 7-7-2006 i.e., more than two months after passing of award by Chairman, Lok Adalat at Chodavaram. During this interregnum also, the petitioner did not make any complaint to the court concerned that his signatures had been obtained on the compromise by use of force or coercion. Therefore, the bald assertion contained in paragraph 6 of the affidavit

cannot be made basis for quashing the award impugned in the writ petition.

There is another reason for non-suiting the petitioner. The affidavit filed in support of the writ petition has not been properly verified. The verification statement reads as under:

> "I, Vemulapudi Suryanarayana, S/o.Appanna, sole petitioner herein, well acquainted with the facts, do hereby verify and state that the contents of paras (1) to (12) etc. of the affidavit filed in support of the writ petition are true to my personal knowledge based on records and believed to be correct and those paras are based on legal advice believed to be correct."

It is beyond comprehension as to how the averments contained in paragraph 6 of the affidavit could be verified by the petitioner on his personal knowledge based on record. If at all there is some record, which supports his assertion, then he should have produced the same along with the writ petition. His failure to do so makes us to believe that the verification of the affidavit is also not correct.

In the result, the writ petition is dismissed.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 28.07.2006

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